

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JERAMIE CARLSSON,

Plaintiff,

BYRON CRAGG, et al.,

Defendants.

Case No. 3:14-cv-00091-MMD-VPC

ORDER ACCEPTING AND ADOPTING  
REPORT AND RECOMMENDATION  
OF MAGISTRATE JUDGE  
VALERIE P. COOKE

Before this Court is the Report and Recommendation of the United States Magistrate Judge Valerie P. Cooke (“R&R”), relating to Defendants Byron Cragg and Ryan Connelly’s Motion to Dismiss (dkt. no. 15). (Dkt. no. 36.) Plaintiff had until July 27, 2015, to object to the R&R. No objection was filed.

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation where no objections have been filed. See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the district court when reviewing a report and recommendation to which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit’s decision in *Reyna-Tapia* as adopting the view that district courts are not required to review “any issue that is not the subject of an

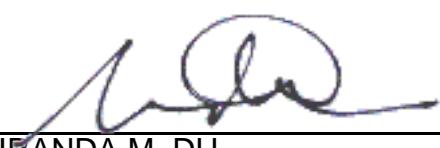
1 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then  
2 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.  
3 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to  
4 which no objection was filed).

5 Nevertheless, this Court has conducted a *de novo* review and determines that the  
6 R&R of the Magistrate Judge should be accepted and adopted in full.

7 It is therefore ordered that Defendants' motion to dismiss (dkt. no. 15) is granted  
8 in part and denied in part. Defendants' argument for dismissal of Plaintiff's Eighth  
9 Amendment claim is rendered moot as Plaintiff cured the deficiency in his amended  
10 complaint. Plaintiff's official-capacity claims against Defendants are dismissed without  
11 prejudice, with leave to amend. Plaintiff's individual-capacity claims against all  
12 defendants shall proceed.

13 If Plaintiff chooses to file an amended complaint he is advised that an amended  
14 complaint supersedes the original complaint and, thus, the amended complaint must be  
15 complete in itself. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d  
16 1542, 1546 (9th Cir. 1989) (holding that "[t]he fact that a party was named in the original  
17 complaint is irrelevant; an amended pleading supersedes the original"); *see also Lacey*  
18 *v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed  
19 with prejudice, a plaintiff is not required to reallege such claims in a subsequent  
20 amended complaint to preserve them for appeal). Plaintiff's amended complaint must  
21 contain all claims, defendants, and factual allegations that Plaintiff wishes to pursue in  
22 this lawsuit. If Plaintiff chooses to file an amended complaint, he must do so within thirty  
23 (30) days from the date of entry of this order. If Plaintiff chooses not to file an amended  
24 complaint curing the stated deficiencies, this action will proceed on Plaintiff's First  
25 Amended Complaint and as limited by this Order.

26 DATED THIS 21<sup>st</sup> day of August 2015.  
27

  
28 MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE